MONTANA LEGISLATIVE HISTORY

Chapter 482 2003

Bill H _____ S 143 Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Business & Labor		
Hearing Date(s)	3-11	___C	Hearing Date(s)	1-9	___C
	3-12	___C		1-21	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	3-12	___C	Date Out	1-21	___

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

	TRANSMITTED TO HOUSE		
3/07	REFERRED TO JUDICIARY		
3/11	HEARING		
3/11	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	17	1
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED	98	2
3/17	3RD READING CONCURRED	95	3
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING HOUSE AMENDMENTS CONCURRED ON VOICE VOTE	50	0
3/20	3RD READING PASSED AS AMENDED BY HOUSE	49	0
3/22	SENT TO ENROLLING		
3/25	RETURNED FROM ENROLLING		
3/27	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/31	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
4/08	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 253		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

SB 142 INTRODUCED BY MCNUTT *LC0255 DRAFTER: PETESCH*

CLARIFY RELATIONSHIP OF PUBLIC DOCUMENTS WITH ELECTRONIC INFORMATION SYSTEMS

BY REQUEST OF DEPARTMENT OF ADMINISTRATION

12/24	INTRODUCED		
12/30	REFERRED TO STATE ADMINISTRATION		
1/17	HEARING		
1/25	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	3	2
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	2ND READING PASSED AS AMENDED ON VOICE VOTE	49	0
1/31	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO STATE ADMINISTRATION		
	DIED IN STANDING COMMITTEE		

SB 143 INTRODUCED BY BOHLINGER *LC0482 DRAFTER: CAMPBELL*

CRITERIA FOR ANNUITIES SOLD BY CHARITABLE ORGANIZATIONS

BY REQUEST OF STATE AUDITOR

12/24	INTRODUCED		
12/30	REFERRED TO BUSINESS AND LABOR		
12/31	FISCAL NOTE REQUESTED		
1/08	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE SIGNED		
1/08	FISCAL NOTE PRINTED		
1/09	HEARING		
1/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	10	0
1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED	33	17
1/25	3RD READING PASSED	33	16
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO BUSINESS AND LABOR		
3/11	HEARING		
3/17	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	12	6
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	2ND READING CONCURRED AS AMENDED	86	14
3/22	3RD READING CONCURRED	89	9
	RETURNED TO SENATE WITH AMENDMENTS		
4/07	2ND READING HOUSE AMENDMENTS CONCURRED ON VOICE VOTE	49	0
4/08	3RD READING PASSED AS AMENDED BY HOUSE	42	7
4/08	SENT TO ENROLLING		
4/09	RETURNED FROM ENROLLING		
4/11	SIGNED BY PRESIDENT		
4/11	SIGNED BY SPEAKER		
4/14	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		

4/24 CHAPTER NUMBER ASSIGNED
CHAPTER NUMBER 482
EFFECTIVE DATE: 4/24/2003 - ALL SECTIONS

SB 144 INTRODUCED BY BARKUS *LC0479 DRAFTER: CAMPBELL*

REVISE SECURITIES LAWS

BY REQUEST OF STATE AUDITOR

12/24	INTRODUCED		
12/30	REFERRED TO BUSINESS AND LABOR		
12/31	FISCAL NOTE REQUESTED		
1/08	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE SIGNED		
1/08	FISCAL NOTE PRINTED		
1/13	HEARING		
1/17	COMMITTEE REPORT—BILL PASSED		
1/20	2ND READING PASSED ON VOICE VOTE	48	0
1/21	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO BUSINESS AND LABOR		
3/11	HEARING		
3/11	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	18	0
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	95	3
3/14	3RD READING CONCURRED	99	1
	RETURNED TO SENATE		
3/15	SENT TO ENROLLING		
3/18	RETURNED FROM ENROLLING		
3/20	SIGNED BY PRESIDENT		
3/20	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
3/27	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 156		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

SB 145 INTRODUCED BY BOHLINGER *LC0323 DRAFTER: HEFFELFINGER*

PARTICIPANTS IN FEDERAL VOLUNTEER PROGRAMS TO PURCHASE PERS SERVICE

BY REQUEST OF STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

7/30	FISCAL NOTE NEEDED		
12/24	INTRODUCED		
12/30	REFERRED TO STATE ADMINISTRATION		
12/31	FISCAL NOTE REQUESTED		
1/07	FISCAL NOTE RECEIVED		
1/07	FISCAL NOTE SIGNED		
1/08	FISCAL NOTE PRINTED		
1/20	HEARING		
1/28	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	5	0
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	36	10
1/31	3RD READING PASSED	41	9
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO STATE ADMINISTRATION		
3/17	HEARING		
3/20	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	11	8
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/31	2ND READING CONCURRED	67	33
4/01	3RD READING CONCURRED	69	30
	RETURNED TO SENATE		
4/02	SENT TO ENROLLING		
4/03	RETURNED FROM ENROLLING		
4/04	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/11	SIGNED BY GOVERNOR		
4/11	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 292		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

SENATE BILL NO. 143

INTRODUCED BY J. BOHLINGER

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE STATE AUDITOR; PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** In [sections 1 through 5], the following definitions apply:

(1) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, for the duration of that life or those lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

(a) section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3); or

(b) section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. 170(c).

(3) (a) "Qualified charitable gift annuity" means a charitable gift annuity, described by section 501(m)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 501(m)(5), section 514(c)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 514(c)(5), section 1011(b) of the Internal Revenue Code of 1986, 26 U.S.C. 1011(b), and the implementing regulations, that is issued by a charitable organization that, on the date of the annuity agreement:

(i) has a minimum of $300,000 net worth or has a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement;

(ii) has been in continuous operation for at least 3 years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least 3 years; and

(iii) maintains a separate annuity fund with at least one-half the value of the initial amount transferred

for outstanding annuities.

(b) If the charitable organization cannot meet the requirements of subsections (3)(a)(i) through (3)(a)(iii), the issuance of a qualified charitable gift annuity by a charitable organization must be commercially insured by a licensed insurance company that is qualified to do business in Montana.

NEW SECTION. **Section 2. Charitable gift annuity not insurance.** (1) The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

(2) A charitable gift annuity issued before [the effective date of this act] is a qualified charitable gift annuity for purposes of [sections 1 through 5], and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

NEW SECTION. **Section 3. Notice to donor.** (1) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor, in writing, in the annuity agreement, that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty association.

(2) The notice provisions required by this section must be in a separate paragraph in print size that is not smaller than that employed in the annuity agreement generally.

NEW SECTION. **Section 4. Notice to commissioner.** (1) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner in writing within 90 days after [the effective date of this act] or the date on which it enters into the organization's first qualified charitable gift annuity agreement. The notice must:

(a) be signed by an officer or director of the organization;

(b) identify the organization;

(c) certify that:

(i) the organization is a charitable organization; and

(ii) the annuities issued by the organization are qualified charitable gift annuities.

(2) The organization is not required to submit additional information except to enable the commissioner to determine appropriate penalties that may be applicable under [section 5].

NEW SECTION. **Section 5. Failure to provide required notice.** The failure of a charitable organization to comply with the notice requirements imposed under [sections 3 and 4] does not prevent a charitable gift annuity that otherwise meets the requirements of [sections 1 through 5] from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of [sections 3 and 4] by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of [sections 3 and 4]. The commissioner may fine the charitable organization in an amount not to exceed $1,000 for each qualified charitable gift annuity agreement issued until the time that the charitable organization complies with [sections 3 and 4].

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 33, chapter 20, part 3, and the provisions of Title 33, chapter 20, part 3, apply to [sections 1 through 5].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: SB0143 **Title:** Criteria for annuities sold by charitable organizations

Primary Sponsor: Bohlinger, J **Status:** As Introduced

Sponsor signature 1/8/03 Date

Chuck Swysgood, Budget Director 1/8/03 Date

Fiscal Summary

Net Impact on General Fund Balance:	$0	$0

☐ Significant Local Gov. Impact	☐ Technical Concerns
☐ Included in the Executive Budget	☐ Significant Long-Term Impacts
☐ Dedicated Revenue Form Attached	☐ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. This bill has no fiscal impact.

SB 143

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SB 143 SPONSOR: Bohlinger, John SHORT TITLE: Criteria for annuities sold by charitable organizations
BY REQUEST OF: State Auditor
REFERRED ON: 12/30/2002 HEARD ON: 01/09/2003
EXECUTIVE ACTION: 01/21/2003 -Bill Passed as Amended -- VOTE: 10 - 0
FINAL DISPOSITION: 04/08/2003 (S) Sent to Enrolling

SB 144 SPONSOR: Barkus, Gregory SHORT TITLE: Revise securities laws
BY REQUEST OF: State Auditor
REFERRED ON: 12/30/2002 HEARD ON: 01/13/2003
FINAL DISPOSITION: 03/27/2003 Chapter Number Assigned

SB 151 SPONSOR: Mahlum, Dale SHORT TITLE: Revise life and health insurance guarantee statutes
BY REQUEST OF: State Auditor
REFERRED ON: 12/30/2002 HEARD ON: 01/28/2003
EXECUTIVE ACTION: 01/29/2003 -Bill Passed as Amended -- VOTE: 10 - 0
FINAL DISPOSITION: 04/01/2003 Chapter Number Assigned

SB 152 SPONSOR: Cocchiarella, Vicki SHORT TITLE: Revise special permits to sell alcohol at special events
BY REQUEST OF: Department Of Revenue
REFERRED ON: 12/30/2002 HEARD ON: 01/09/2003
EXECUTIVE ACTION: 01/14/2003 -Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION: 04/08/2003 (S) Sent to Enrolling

SB 153 SPONSOR: McNutt, Walter SHORT TITLE: Generally revise laws governing state fund
BY REQUEST OF: State Compensation Insurance Fund
REFERRED ON: 12/30/2002
INDEFINITELY POSTPONED: 01/28/2003
FINAL DISPOSITION: 02/28/2003 (S) Missed Deadline for General Bill Transmittal

SB 162 SPONSOR: Story, Bob SHORT TITLE: Exempt no additional cost services from unemployment insurance tax
REFERRED ON: 01/08/2003 HEARD ON: 01/20/2003
EXECUTIVE ACTION: 01/23/2003 -Bill Passed as Amended -- VOTE: 9 - 1
FINAL DISPOSITION: 04/07/2003 (S) Transmitted to Governor

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MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on January 9, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddye McClure, Staff Attorney, Legislative Services Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 143, 12/30/2002; SB 152, 12/30/2002; SB 125, 12/30/2002
Executive Action: None

{Tape: 1; Side: A}

HEARING ON SB 125

Sponsor: **SEN. JON TESTER, SD 45, BIG SANDY**

who have adequate capital and net worth. It's important for the individuals making the offers to know their investors, to know whether or not they have the means to invest in this particular corporation. By knowing that, they have a better understanding about the individual's ability to accept or decline the offer. **Ms. Elias** concluded that it boils down to concern about investor protection and not opening this up too much to buyers.

SEN. SPRAGUE asked **SEN. TESTER** to discuss the amendments put forth by **Mr. Wells**. **SEN. TESTER** shared that he is somewhat hesitant to go to the buyers and open it up that much wider. He reminded the committee of his opening comments in which he spoke of balance, that this is an exemption and the goal is to make sure investors are protected. **SEN. SPRAGUE** inquired if **SEN. TESTER** recommend that the committee clear the bill in its entirety excluding the recommendations. **SEN. TESTER** recommended that the committee include **Mr. Wells'** amendments.

SEN. MAHLUM directed comments to **SEN. TESTER** regarding bringing his amendment in and asked him who he wants on the sub-committee. **SEN. TESTER** shared that **SEN. KITZENBERG** offered to do it.

Closing by Sponsor:

SEN. TESTER'S closing was included in his response to **SEN. MAHLUM.**

HEARING ON SB 143

Sponsor: **SEN. JOHN BOHLINGER, SD 7, BILLINGS**

Proponents: **Jill Gerdrum, State Auditor's office; Aidan Myhre, Governor's Task Force on Philanthropy; John Scibek, Director of Pledge Giving, University of Montana Foundation; Linda Reed, Executive Director, Montana Community Foundation; Pat Callbeck-Harper, Associate Director, AARP Montana; Mike Munck, Executive Director, Independent Insurance Agents of Montana.**

Opponents: **Roger McGlenn, Executive Director, Independent Insurance Agents of Montana; Jacqueline Lenmark representing American Council of Life Insurers and American Insurance Association; Don Allen, Montana Association of Insurance and Financial Advisors.**

Opening Statement by Sponsor:

SEN. BOHLINGER, SD 7, BILLINGS, opened by saying that Montana is a state without a lot of deep pockets. Most grew up in families of modest means with parents who worked hard to provide for them. After contributing to church on Sunday, there was little money left for charity. He said his generation prospered. Their financial lives have been made a little more secure and they have been able to provide financial resources to charities of their choice. From his perspective as a 10-year veteran of the Montana Legislature, he professed his belief that one of the best pieces of legislation on which he had the opportunity to work and vote came when tax incentives were established for charitable gift annuities. **SEN. BOHLINGER** defined a charitable gift annuity as a payment of cash, securities or property by an individual to a charitable organization in return for an annual payment for life. He continued by saying there are two basic benefits to the donor who establishes such an annuity. Firstly, it provides for an immediate tax deduction, and it also treats in a favorable way the annuity benefit. At the time of death of the person or couple who establishes such a trust, the asset value of these funds is disbursed to the charity or charities of the donor's choice. Under present law, charitable organizations that sell gift annuities need to be licensed as an insurance company and have their products approved by the Montana Insurance Department. The Montana Insurance Department does not want to unreasonably restrict a valuable source of income to Montana charities by requiring them to be licensed insured. **SEN. BOHLINGER** shared that this is the reason the State Auditor proposed SB 143 to provide charities with a valuable fund-raising tool while keeping strong consumer protection measures in place. He continued by saying that SB 143 exempts charitable gift annuities from regulation by the insurance department provided they are issued by a qualified charity and that proper notices have been given. **SEN. BOHLINGER** listed the ways this bill creates an exemption from insurance regulations for charities meeting the following criteria: 1)The charitable organization must file a notice with the State Auditor's office if they intend to issue qualified charitable gift annuities; 2)The organization must have an IRS non-profit status such as a 501c(3) for at least three years; 3) The organization must have a minimum of 300K dollars net worth or a minimum of 100K dollars in unrestricted cash and maintain a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities; 4) When entering into an agreement for a qualified charitable gift, the organization must disclose in writing that the annuity is not an insurance product. **SEN. BOHLINGER** emphasized that, by adopting SB 143, we would be doing what 33 other states have done. To date, there have been no reports of charitable gift annuity fraud in Montana, but the North American Securities Administrators Association ranks charitable gift annuity fraud eighth among its

top ten investment scams. **SEN. BOHLINGER** stated that the Governor's Task Force on Charitable Gift Annuities publicly announced that this bill is a reasonable piece of legislation because it will facilitate the activity of charitable gift annuities in our state; that is, it will encourage more active philanthropy in our state.

{Tape: 2; Side: A}

Proponents' Testimony:

Jill Gerdrum, State Auditor's office, stated that for the past year, her office has worked on this bill with charities throughout Montana and that the bill provides clarification on laws regulating charitable gift annuities, **EXHIBIT(bus04a03), EXHIBIT(bus04a04).** Current law requires charities to license as insurance companies and meet all other requirements under Title 33. But, she said, charitable gift annuities are not traditional insurance plans. **Ms. Gerdrum** shared that this bill allows exemptions for legitimate charities that have the business and financial capabilities to offer annuities. She claimed that SB 143 would protect Montana consumers by requiring charities to register with her department and provide documentation that ensures they meet the necessary criteria. Other states have seen abuses in the area of charitable gift annuities; however, there haven't been any abuses in Montana. She touched on several consumer protection aspects of the bill. She claimed that her department's belief is that this bill will provide them with the opportunity to allow a valuable tool for legitimate charities and focus on organizations that are not legitimate. She noted one other concern is the small charities that are not able to meet the requirement but might want to offer these annuities. While this bill would not allow those small charities the possibility of offering gift annuities, she said they feel that those charities won't have the long-term ability to make good on the annuity payments and those charities would need to utilize a tool such as the Community Foundation or other group to offer the gift annuity.

Aidan Myhre, Governor's Task Force on Philanthropy, rose in support of the bill.

John Scibek, Director of Pledge Giving, University of Montana Foundation, registered their support of the bill. He said that in offering gift annuities to their constituents, which are alumni and friends of the university, they do not represent the annuities as insurance vehicles nor that they are guaranteed by an insurance guarantor. He stated that they don't compete with commercial annuities because of the charitable component within a

gift annuity, which provides a lower payment than a commercial annuity. Small charities that don't otherwise qualify under this act can issue gift annuities through a community foundation or a commercially insuring annuity.

Linda Reed, Executive Director, Montana Community Foundation, a statewide philanthropy services organization that manages 40M dollars on behalf of Montana charities, offered their support of the bill. She said they think it does three important things. Namely, it protects consumers of Montana; it provides adequate oversight of charitable organizations offering charitable gift annuities; and it provides prudent guidance for charitable organizations offering these products to their potential donors.

Pat Callbeck-Harper, Associate Director, AARP Montana, shared the results of a survey done by her organization in November, 2002 of the 136,000 AARP members in Montana on consumer fraud issues. While none of those surveyed filed action on their experience, 39% believe they have been victims of consumer swindle or fraud. One in five members believe they have been victims of charity or donation fraud and nearly one in five felt they were victims in the area of insurance products. She went on to say that their members feel they have been victims of agencies that are not regulated. In addition, those surveyed said they are not aware of the consumer protections they have in charitable giving and insurance products. She shared AARP Montana's strong support of the bill, **EXHIBIT(bus04a05).**

Mike Munck, Executive Vice President, St. Peter's Hospital, testified in support of the bill for reasons that were already enumerated.

Opponents' Testimony:

Roger McGlenn, Executive Director, Independent Insurance Agents of Montana, reluctantly rose in partial opposition to the bill. He claimed to not oppose the intent of the bill nor the drafting of the bill with the exception of Section 2 on page 2, line 6. **Mr. McGlenn** said what his organization opposes is the increasing exemptions from insurance regulation and that every session he sees more and more legislation coming up that this isn't insurance and shouldn't be regulated as insurance. He discussed consumer protections brought up in testimony and stated that he thinks this bill reduces consumer protections. These charitable endowments and annuities are already covered under Title 33, Chapter 20, Part 3 under which this bill is being codified. He continued on to say that virtually all the regulatory oversight of this bill comes prior to these annuities being issued -- the reporting, the qualifications and everything else. If it says

under Section 2 (Line 8) that this is not insurance and, in fact, Part 2 of Section 2, which is line 8, we are exempting existing ones that are currently covered under the regulatory oversight of the insurance department. He explained that this goes a long way to reducing the consumer protection regulatory oversight of these annuities once they are in place. He submitted that people that are encouraged to enter into these charitable gift annuities don't understand what is meant when they are told that this is not insurance. In an effort to try and find some middle ground, he proposed that the committee consider an amendment which would exempt these vehicles from the definition of insurer or insurance carrier. In other words, they are not a company, so they don't have to meet all of the requirements of Title 33 to become an insurance company to offer all of these gifts. But they would still fall under regulatory oversight under the insurance department and could be reviewed on an ongoing basis. With such an amendment, **Mr. McGlenn** said his organization would readily support this bill.

Jacqueline Lenmark, representing American Council of Life Insurers and American Insurance Association, offered some technical concerns about the way the bill was drafted, whether it accomplishes the good objectives the were heard from the proponents, and whether it secures the consumer protections that we all support. She went on to share her personal experiences and the value of these annuities. **Ms. Lenmark** stated that with amendment, AIA and the ACLI would stand in support of this legislation.

Don Allen, Montana Association of Insurance and Financial Advisors, talked about having discussions with the State Auditor's office and he also shared his concerns about the bill as it stands. He said that in his experience in working with different associations and groups, he is well aware of the importance of the charitable gift endowment programs. He thinks they serve a great purpose and that perhaps there is a middle ground and would like to work toward amending the bill.

Questions from Committee Members and Responses:

SEN. RYAN asked **Ms. Gerdrum** about her office's statement that there have been no cases of fraud in Montana and yet Exhibit 1 indicates an example of fraud in Arizona, which is an exempt state. **Ms. Gerdrum** explained that the Arizona case listed in Exhibit 1 occurred before they became an exempt state and she went on to give some background. She said that the insurance department has issued opinions over the past 20 years on charitable gift annuities. In the 1980's, **Commissioner Bennett** issued a letter stating that charitable gift annuities were not

to be sold unless the charity was fully licensed as an insurance company. It came to the State Auditor's office attention about a year ago that charities were out selling these charitable gift annuities. **Ms. Gerdrum** went on to say that it is the interpretation of her office's legal staff that the insurance code does require charities to be licensed as insurance companies. Her office called in local charities that have been using this tool for fund raising. They sat down and discussed possible solutions. **Ms. Gerdrum** said that with SB 143 requiring the IRS standard 300K dollar net worth, her office can fully understand who is out there, exempt those that are legitimate charities and have the wherewithal to pay the annuities, and then they can focus their attention on those who are not.

SEN. RYAN directed his next question to **Mr. Scibek.** He asked if his University of Montana charity is in violation of the law and how his organization is handling the situation.

{Tape: 2; Side: B}

Mr. Scibek stated that the way they offer gift annuities and the way they acknowledge and provide disclosure about how gift annuities and the investments/assets are used, they are not in violation. There would, however, be one or two additional terms to add to their disclosures. **SEN. RYAN** followed up by asking if this bill doesn't pass, will they be able to continue to operate and have those annuities available. **Mr. Scibek** said he believes it depends on what the decision about how the annuities would be regulated.

SEN. GEBHARDT asked **Ms. Gerdrum** about small charities that don't have the 300K dollar net worth or 100K dollars in cash. Can they accept an annuity as long as it is given through an insurance company? **Ms. Gerdrum** said the charity could accept benefits of an annuity, but they couldn't sell an annuity themselves. They could group together with an organization such as The Community Foundation to sell gift annuities or they could go through a fully licensed insurance company to guarantee and use that process.

SEN. GEBHARDT queried **Ms. Reed** about her organization sponsoring an annuity for a small charity and asked if they charge an administrative fee for doing so. **Ms. Reed** answered in the affirmative and said it comes out of the proceeds of the annuity itself. Their administrative fee is .9 percent.

SEN. COCCHIARELLA asked **Ms. Lenmark** if the St. Pete's Foundation is a fully licensed insurance company. **Ms. Lenmark** did not think so. **SEN. COCCHIARELLA** asked if that is the case, is the

foundation operating outside the law and doesn't this bill bring people into some kind of review? **Ms. Lenmark** replied that she thinks that is the intent of the bill and her concern is that the review of the charity is before the fact only and then it is exempted by the terms of the act from the insurance company. Her concern was whether the bill gives the State Auditor the authority to come in later and discipline a charity for some violation. She also wanted to say that there were comments made about scams, but she thinks there is another problem and reason that we should want the insurance commissioner to regulate. It is because sometimes companies or entities simply fall into financial difficulty and it doesn't have anything to do with an intent to scam the customer or consumer.

SEN. RYAN questioned the wording that states "over one or two lives." **SEN. BOHLINGER** answered that his belief is that the term means a husband and wife. **Ms. Gerdrum** further explained the wording.

SEN. ANDERSON asked **Ms. Gerdrum** to explain the concerns with the exemptions of the insurance requirement from her office. **Ms. Gerdrum** explained that charities file with her office listing the criteria to be exempt. When her office receives a complaint or has some reason to believe that a charity does not meet the criteria, then they don't qualify for the exemption. **SEN. ANDERSON** said that even though they are exempt from the insurance requirement, they could still be regulated under the law and he did not understand how that would work. **Ms. Gerdrum** stated they are exempt as long as they continue to meet the criteria. In the event that they no longer meet the criteria, it's incumbent upon them to stop issuing the annuities.

Closing by Sponsor:

SEN. BOHLINGER closed by saying that he would not want to come forward with a bill that would expose Montanans, those with generous hearts, to an opportunity for fraud. Nor would he want to make it easy for someone to scam a generous-spirited Montanan. He felt the concerns raised are good and hoped the criteria that were established would be sufficient safeguards. What the bill would do would bring an overview to the people who presently operate outside the law. He stated **Mr. McGlenn** and **Ms. Lenmark** raised some good concerns, in particular, **Mr. McGlenn's** proposal of an amendment to exempt these vehicles from the need to be licensed to sell insurance and offered to talk with him to discuss an amendment. **SEN. BOHLINGER** assured **CHAIRMAN MAHLUM** that he would coordinate with **Mr. McGlenn** and **Ms. Lenmark** to make sure all of the problems are taken care of before this bill comes before executive action.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 1/9/03
BILL NO. SB 143

STATE AUDITOR'S OFFICE
Charitable Gift Annuities
SB 143

Definition
A charitable gift annuity is a payment of cash or securities by an individual to a charitable organization in return for annual annuity payments for life. Two basic benefits to the individual are an immediate income tax charitable deduction and favorably taxed annuity benefits. At the death of the individual, the remaining funds are dispersed to the charity.

Example: Mr. Jones, 68, arranges a charitable gift annuity with a qualified charity. He makes a gift of $20,000 and the charity agrees to pay him $1,340 each year for the rest of his life. The annual annuity payments are fully guaranteed.

Purpose
Currently, charitable organizations that sell gift annuities may need to be licensed as an insurance company and have their products approved by the Montana Insurance Department. There is a risk assumed with annuities because the life expectancy of the annuitant is unknown.

The Montana Insurance Department does not want to unreasonably restrict a valuable source of income for Montana charities by requiring them to become licensed insurers, but we must protect Montana consumers. The State Auditor has proposed SB 143 to provide charities with a valuable fund-raising tool, while keeping strong consumer protection measures in place.

Details
SB 143 **exempts** charitable gift annuities from regulation by the Insurance Department provided they are issued by a qualified charity and the proper notices are given.

This bill creates an exemption from insurance regulation for charities meeting the following criteria:

- Charitable organizations must file a notice with the State Auditor's Office if they intend to issue a qualified charitable gift annuity.
- The organization must have IRS nonprofit status such as 501(c)(3) for at least three years.
- The organization must have a minimum of $300,000 net worth or a minimum of $100,000 in unrestricted cash, and maintain a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities.
- When entering into an agreement for a qualified charitable gift annuity, the organization must disclose in writing that the annuity is not an insurance product.
- A charitable gift annuity issued by a charity before passage of this bill is considered qualified, but going forward, all charitable gift annuities must meet the above criteria.

The Governor's Task Force on Charitable Endowments publicly acknowledged that this bill "is reasonable legislation that will facilitate the activity of charitable gift annuities in Montana."

State-by-State Comparison
Thirty-three states exempt charitable gift annuities from insurance law. Thirteen states exempt them from insurance law provided they are issued by a qualified charity, similar to SB 143.

Examples of Fraudulent Charitable Gift Annuities
There have been no reports of charitable gift annuity fraud in Montana, but the North American Securities Administrators Association ranks it eighth among its top 10 investment scams.

In Arizona, regulators uncovered a charitable gift annuity scam that took 430 investors nationwide for an average of $133,000. The scam's founder ran a $54 million scheme through a network of independent insurance agents, financial planners and accountants. He used investors' funds to buy three homes and a ranch, book charter flights and support a gambling habit.

1/8/03

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 1/9/03
BILL NO. SB 143

STATE AUDITOR'S OFFICE
Charitable Gift Annuities
SB 143

- States take three approaches to regulation of charitable gift annuities:
  1) Regulate the charity
  2) Issue an exemption from insurance law
  3) Law may be silent

- The National Association of Insurance Commissioners has adopted two models, one for regulation of charitable gift annuities and one for exempting them from state insurance law. Most states adopted one of the two models.

- Exemptions exist in two forms:
  1) Exempt from insurance laws
  2) Exempt from insurance law provided they are issued by a qualified charity, similar to SB 143

State	Type of Model Adopted	Type of Exemption
Alabama	No Provision	
Alaska	Exempt	Qualifying criteria
Arizona	Exempt	Insurance law
Arkansas	Regulated	
California	Regulated	
Colorado	Exempt	Insurance law
Connecticut	Exempt	Qualifying criteria
Delaware	Exempt	Insurance law
District of Columbia	No Provision	
Florida	Regulated	
Georgia	Exempt	Qualifying criteria
Hawaii	Exempt	Insurance law
Idaho	Exempt	Qualifying criteria
Illinois	Exempt	Insurance law
Indiana	Exempt	Insurance law
Iowa	Exempt	Qualifying criteria
Kansas	Exempt	Qualifying criteria
Kentucky	Exempt	Insurance law
Louisiana	Exempt	Insurance law
Maine	Exempt	Insurance law
Maryland	Regulated	
Massachusetts	Exempt	Insurance law
Michigan	No Provision	
Minnesota	Exempt from securities law	Qualifying criteria
Mississippi	Exempt	Insurance law

Missouri	Exempt	Qualifying criteria
Montana	Prohibited	
Nebraska	Exempt	Insurance law
Nevada	No Provision	
New Hampshire	Exempt	Insurance law
New Jersey	Regulated	Qualifying criteria
New Mexico	Exempt	Insurance law
New York	Regulated	
North Carolina	Exempt	Qualifying criteria
North Dakota	Exempt	Insurance law
Ohio	No Provision	
Oklahoma	Exempt	Qualifying criteria
Oregon	Regulated	
Pennsylvania	Exempt	Insurance law
Puerto Rico	No Provision	
Rhode Island	Exempt	Does not have clear statutory authority. State is investigating issue.
South Carolina	Exempt	Insurance law
South Dakota	Exempt	Qualifying criteria
Tennessee	Exempt	Insurance law
Texas	Exempt	Insurance law
Utah	Exempt	Qualifying criteria
Vermont	Exempt	Insurance law
Virgin Islands	No Provision	
Virginia	Exempt	Insurance law
Washington	Regulated	
West Virginia	No Provision	
Wisconsin	Regulated	
Wyoming	No Provision	

AARP Montana

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 1/9/03
BILL NO. SB143

January 9, 2003

Support SB 143

Honorable Dale Mahlum, Chair
Senate Business and Labor Committee
Montana's 58th Legislative Assembly

Mr. Chairman and members of the Business and Labor Committee, my name is Pat Callbeck Harper and I am the Associate State Director for AARP Montana.

AARP is a non-profit, non-partisan membership organization for people 50 and older with more than 136,000 Montana members in Montana and 35+ million members across the country. A team of 20 volunteers of the Capital City Task Force provides testimony on key issues of importance to our membership.

The 2002 AARP Montana Consumer Fraud Survey of our members revealed 39% say they believe they have been the victim of consumer swindle or fraud. This is almost double the response to a similar question in a national survey where 21% said they have been a victim of a major swindle or fraud.

The survey of our members reveals at least 18 % of our members have been victims of charities and donations (18%) and nearly one in five say they have been a victim in the areas of insurance products (19%).

Our members attribute many of the examples of consumer swindles to industries that are unregulated or undefined by consumer protections.

We agree with the Governor's Task Force on Charitable Endowments and the State Auditor's Office that SB 143 will facilitate the activity of charity gift annuities and at the same time put stronger consumer protection measures in place.

Thank you for allowing us the opportunity to testify today and we look forward to working with each of you during the session as a "voice of the consumer" in Montana.

1325 Euclid Avenue, Suite 2 | Helena, MT 59601 | 406-441-2277 | 406-441-2230 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 1/9/03
BILL NO. SB143

Amendments to Senate Bill No. 143
1st Reading Copy

Requested by Senator Dale Mahlum

For the Senate Business and Labor Committee

Prepared by Eddye McClure
January 16, 2003 (12:39pm)

1. Page 2, line 21.
Following: "agreement"
Insert: "and shall notify the commissioner on March 1 of each year in which the charitable organization issues qualified charitable gift annuities"

2. Page 2, line 28.
Following: "except"
Insert: ": (a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or
(b)"

3. Page 3, line 11.
Following: "20" in two places
Strike: "part 3"

- END -

DATE January 9

SENATE COMMITTEE ON Business and Labor

BILLS BEING HEARD TODAY: SB143, SB 152, SB125

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Roger McGlenn	442-9555	IAM	143		X Amend
Bill Johnston	544-2586	MT University System	152	✓	
Karen Sitte	370-2427	UM Foundation	143	✓	
Tom Wolf	595 7864	Self	125	✓ Amend	
GEORGE METCALFE	586-3749	VENTURES INTERNATIONAL INC.	125	✓ Amend	
Neil Peterson	444-1941	Dept. of Revenue	152	✓	
MATT ELLIS	543-3300	MISSOULA OSPREY	152	✓	
Mike Munck	444-2102	St. Peter's Hospital	143	✓	
Robert Pavlovich	782 4507	SELF	152	✓	
John Scibek	243-2593	Univ. MT Foundation	143	✓	
Riley Johnson	443-3797	~~Enterprise Rent-A-Car~~ NFIB	125	✓	✓
Mark Kovelan	252-2523	Exchange Club	152	X	
Kristi Blaz	442-7460	MT Bio Medical Manufacturers	152	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1/9/02

SENATE COMMITTEE ON B & L

BILLS BEING HEARD TODAY: SB 143, SB 152, SB 125

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Jacqueline Lenmark	2-0230	ACLI; AIA SB	123		oppose and
MARK VINNIER	652-1366	BREAKFAST EXCHANGE CLUB	152	✓	
Pat Callbeck Harper	457-4041	AARP Montana	143	✓	
STEVE MORRIS	442-6380	MTA SB	15-2	✓	
Christian Bodt	4-1942	SAC	143	✓	
John Utz, Helena	449-6390	Attorney	125	✓	
Rep. Monica J. Lindeen		HD7	152	✓	
Steve Nitz	248-1618	Downtown Exchange Club	152	✓	
Linda Reed	443-8313	MT Comm. Fnd	143	✓	
Dale Markovich	782-9158	Roach & Smith Distrb	152	✓	
Aidan Mythe	442-6383	Gov. Task Force on Philanthropy MT Comm Found.	143	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on January 21, 2003 at 9:02 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddye McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: SB 180, 1/9/2003
Executive Action: SB 108; SB 143; SB 180

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SB 143

SEN. COCCHIARELLA moved **DO PASS** on SB 143 and the amendments, **EXHIBIT(5)** (SB014301.aem). The vote was unanimous.

EXECUTIVE ACTION ON SB 180

SEN. RYAN moved the amendment with **SEN. COCCHIARELLA** moving **DO PASS** on SB 180 as amended, (SB0180.aem). The vote was unanimous.

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Business and Labor** recommend that **Senate Bill 143** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Dale Mahlum, Chair

And, that such amendments read:

1. Page 2, line 21.
Following: "agreement"
Insert: "and shall notify the commissioner on March 1 of each year in which the charitable organization issues qualified charitable gift annuities"

2. Page 2, line 28.
Following: "except"
Insert: ": (a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or
(b)"

3. Page 3, line 11.
Following: "20," in two places
Strike: "part 3,"

- END -

Committee Vote:
Yes 10, No 0.

121036SC.ssc

SR

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 1/21/03
BILL NO. 143

Amendments to Senate Bill No. 143
1st Reading Copy

Requested by Senator Dale Mahlum

For the Senate Business and Labor Committee

Prepared by Eddye McClure
January 16, 2003 (12:39pm)

1. Page 2, line 21.
Following: "agreement"
Insert: "and shall notify the commissioner on March 1 of each year in which the charitable organization issues qualified charitable gift annuities"

2. Page 2, line 28.
Following: "except"
Insert: ": (a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or
(b)"

3. Page 3, line 11.
Following: "20" in two places
Strike: "part 3"

- END -

MONTANA SENATE
2003 LEGISLATURE
BUSINESS & LABOR COMMITTEE
ATTENDANCE

DATE: January 21, 2003

NAME	PRESENT	EXCUSED	ABSENT
SENATOR DALE MAHLUM, CHAIR	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR SHERM ANDERSON	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR KELLY GEBHARDT	✓		
SENATOR BOB KEENAN		✓	
SENATOR SAM KITZENBERG	✓		
SENATOR KEN HANSEN	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR CAROLYN SQUIRES	✓		
SENATOR FRED THOMAS		✓	

MONTANA SENATE
2003 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 1-21-03 BILL NO. SB143

MOTION: Sen. Cocchiarella moved DO PASS on SB143 as amended.

NAME	AYE	NO
SENATOR DALE MAHLUM, CHAIR	✓	
SENATOR MIKE SPRAGUE, VICE CHAIR	✓	
SENATOR SHERM ANDERSON	✓	
SENATOR VICKI COCHIARELLA	✓	
SENATOR KELLY GEPHARDT	✓	
SENATOR BOB KEENAN		
SENATOR SAM KITZENBERG	✓	
SENATOR KEN HANSEN	✓	
SENATOR GLENN ROUSH	✓	
SENATOR DON RYAN	✓	
SENATOR CAROLYN SQUIRES	✓	
SENATOR FRED THOMAS		
10-0 in favor		

SB 125 SPONSOR: Tester, Jon SHORT TITLE: Revise requirements for registration when raising capital
BY REQUEST OF: State Auditor
REFERRED ON: 03/07/2003 HEARD ON: 03/11/2003
EXECUTIVE ACTION: 03/11/2003 - Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION: 04/01/2003 Chapter Number Assigned

SB 131 SPONSOR: Barkus, Gregory SHORT TITLE: Board of Investments purchase of loans from local development organizations
BY REQUEST OF: Governor
REFERRED ON: 03/07/2003 HEARD ON: 02/14/2003
HEARD ON: 03/14/2003
EXECUTIVE ACTION: 03/14/2003 - Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION: 04/01/2003 Chapter Number Assigned

SB 143 SPONSOR: Bohlinger, John SHORT TITLE: Criteria for annuities sold by charitable organizations
BY REQUEST OF: State Auditor
REFERRED ON: 03/07/2003 HEARD ON: 03/11/2003
EXECUTIVE ACTION: 03/17/2003 - Bill Concurred as Amended -- VOTE: 12 - 6
FINAL DISPOSITION: 04/08/2003 (S) 3rd Reading Passed as Amended by House; Vote: 42 - 7

SB 144 SPONSOR: Barkus, Gregory SHORT TITLE: Revise securities laws
BY REQUEST OF: State Auditor
REFERRED ON: 03/07/2003 HEARD ON: 03/11/2003
EXECUTIVE ACTION: 03/11/2003 - Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION: 03/27/2003 Chapter Number Assigned

SB 151 SPONSOR: Mahlum, Dale SHORT TITLE: Revise life and health insurance guarantee statutes
BY REQUEST OF: State Auditor
REFERRED ON: 03/07/2003 HEARD ON: 03/11/2003
EXECUTIVE ACTION: 03/11/2003 - Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION: 04/01/2003 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 11, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 151 (3/7/03); SB 143 (3/7/03); SB 144 (3/7/03); SB 125 (3/7/03)

REP. MENDENHALL asked Ms. Lenmark about the assessments which would be factored into this bill and if there would be a rise in premiums. **Ms. Lenmark** said there should be sufficient reserves and surplus with the companies who are members of the Association.
{Tape: 1; Side: B; Approx. Time Counter: 1 - 71}

Closing by Sponsor:

The sponsor closed and indicated REP. MENDENHALL would carry the bill on the House floor.
{Tape: 1; Side: B; Approx. Time Counter: 71 - 133}

HEARING ON SB 143

Sponsor: **SEN. JOHN BOHLINGER, SD 7, Billings**

Opening Statement by Sponsor:

SEN. BOHLINGER said this bill provided a qualified charitable gift annuity is not insurance. It requires that charitable organizations entering into a charitable gift annuity agreement give notice to donors and the State Auditor's Office.
{Tape: 1; Side: B; Approx. Time Counter: 143 - 280}

Proponents' Testimony:

Jill Gerdrun, State Auditor's Office, provided written testimony explaining the bill.
EXHIBIT(buh51a08)
{Tape: 1; Side: B; Approx. Time Counter: 280 - 394}

Aidan Myhre, Governor's Task Force, said they recognized there was an inconsistent law and questions regarding charities throughout Montana. The primary intent is a gift to the charity.
{Tape: 1; Side: B; Approx. Time Counter: 394 - 430}

Jim Soft, President, Yellowstone Boys and Girls Ranch Foundation, said this bill will help reconcile the insurance side of the statute and the charitable side of the statute.
{Tape: 1; Side: B; Approx. Time Counter: 430 - Tape: 2; Side: A; Approx. Time Counter: 43}

Linda Reed, Executive Director, Montana Community Foundation, said this bill clarifies for consumers, that nonprofit

organizations are qualified to offer these particular kinds of gifts. It allows the Auditor's Office to oversee the project.
{Tape: 2; Side: A; Approx. Time Counter: 24 - 43}

Jacqueline Lenmark, American Council of Life Insurers, said this bill is a good clarification of the regulation of this particular noninsurance product.
{Tape: 2; Side: A; Approx. Time Counter: 43 - 49}

Pat Callbeck Harper, Associate State Director, AARP Montana, provided written testimony.
EXHIBIT(buh51a09)
{Tape: 2; Side: A; Approx. Time Counter: 49 - 56}

Clark Pyfer, Retired, Gallusha, Higgins & Gallusha, said he was a charter member of the Community Foundation and supports this bill.
{Tape: 2; Side: A; Approx. Time Counter: 56 - 70}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MAEDJE asked SEN. BOHLINGER about some possible amendments to this bill and SEN. BOHLINGER stated he preferred the bill stands as it is.
{Tape: 2; Side: A; Approx. Time Counter: 70 - 196}

REP. KEANE asked SEN. BOHLINGER if he indeed did not want the Committee to amend the bill and SEN. BOHLINGER stated he did not.
{Tape: 2; Side: A; Approx. Time Counter: 196 - 197}

Closing by Sponsor:

The sponsor closed and indicated REP. MENDENHALL was to carry this bill on the House floor.
{Tape: 2; Side: A; Approx. Time Counter: 197 - 215}

HEARING ON SB 144

Sponsor: **SEN. GREGORY D. BARKUS, SD 39, Kalispell**

EXHIBIT(buh51a11)
{Tape: 2; Side: A; Approx. Time Counter: 419 - 505}

Aiden Myhre, Governor's Task Force, said they supported this bill.
{Tape: 2; Side: B; Approx. Time Counter: 1 - 3}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

The sponsor closed and indicated REP. BERGREN would carry the bill on the House floor.
{Tape: 2; Side: B; Approx. Time Counter: 3 - 10}

EXECUTIVE ACTION ON SB 144

{Tape: 2; Side: B; Approx. Time Counter: 10 - 100}

Motion/Vote: REP. BITNEY moved that SB 144 BE CONCURRED IN. Motion carried 18-0.

Motion/Vote: REP. BITNEY moved that SB 144 BE PLACED ON THE CONSENT CALENDAR. Motion carried 17-1 with REP. KEANE voting no. (Though the motion carried, the bill will not be placed on the consent calendar according to House Rules H40-110(b) requiring a unanimous vote on such a motion.)

REP. BITNEY will carry the bill on the House Floor.

EXECUTIVE ACTION ON SB 143

Motion/Vote: REP. MENDENHALL moved that SB 143 BE CONCURRED IN. Motion carried 18-0.

Discussion:

REP. MAEDJE asked if the Committee could hold off on voting on this bill because he did have some proposed amendments.

CHAIRMAN McKENNEY asked that REP. MENDENHALL withdraw his motion as a courtesy to REP. MAEDJE.

Motion/Vote: REP. MENDENHALL moved to WITHDRAW his motion BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 125

Motion/Vote: REP. BERGREN moved that SB 125 BE CONCURRED IN. Motion carried 18-0.

Motion: REP. MORGAN moved that SB 125 BE PLACED ON THE CONSENT CALENDAR. CHAIRMAN McKENNEY did not recognize the motion.

EXECUTIVE ACTION ON SB 151

Motion/Vote: REP. MORGAN moved that SB 151 BE CONCURRED IN. Motion carried 18-0.

REP. MENDENHALL will carry this bill on the House Floor.

EXECUTIVE ACTION ON SB 36

Motion: REP. MORGAN moved that SB 36 BE CONCURRED IN.

Discussion:

REP. MORGAN said the bill limits where a person would need to be a sole proprietor in order to do the job. If that language were removed the bill would read the same. It would still specify a water commissioner appointed by a District Court is not an employee of the judicial branch.
EXHIBIT(buh51a12)

REP. MENDENHALL said his amendment would leave the sole proprietor in the bill and adds any other business entity elected by the commissioner. He also indicated he had spoken with the Department regarding this amendment.
EXHIBIT(buh51a13)

REP. MORGAN indicated a representative of the Supreme Court had approached her before the amendment was brought out and they indicated there was an amendment proposed to "fix the bill."

Motion: REP. MENDENHALL moved the Mendenhall amendment (Exhibit 13)

EXHIBIT 8
DATE 3-11-03
SB 143

STATE AUDITOR'S OFFICE
Charitable Gift Annuities
SB 143

Definition
A charitable gift annuity is a payment of cash or securities by an individual to a charitable organization in return for annual annuity payments for life. Two basic benefits to the individual are an immediate income tax charitable deduction and favorably taxed annuity benefits. At the death of the individual, the remaining funds are dispersed to the charity.

Example: Mr. Jones, 68, arranges a charitable gift annuity with a qualified charity. He makes a gift of $20,000 and the charity agrees to pay him $1,340 each year for the rest of his life. The annual annuity payments are fully guaranteed.

Purpose
Currently, charitable organizations that sell gift annuities may need to be licensed as an insurance company and have their products approved by the Montana Insurance Department.

SB 143 would allow an exemption from regulation if certain consumer protection measures are taken.

This bill creates an exemption from insurance regulation for charities meeting the following criteria:

- Charitable organizations must file a notice with the State Auditor's Office if they intend to issue a qualified charitable gift annuity.
- The organization must have IRS nonprofit status such as 501(c)(3) for at least three years.
- The organization must have a minimum of $300,000 net worth or a minimum of $100,000 in unrestricted cash, and maintain a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities.
- When entering into an agreement for a qualified charitable gift annuity, the organization must disclose in writing that the annuity is not an insurance product.
- A charitable gift annuity issued by a charity before passage of this bill is considered qualified, but going forward, all charitable gift annuities must meet the above criteria.

The Governor's Task Force on Charitable Endowments acknowledged that this bill "is *reasonable legislation that will facilitate the activity of charitable gift annuities in Montana.*"

State-by-State Comparison
States take four different approaches to the regulation of charitable gift annuities:

1) Nine states regulate them as an insurance company.
2) Twenty-two states exempt charitable gift annuities from insurance law.
3) Eleven states exempt charitable gift annuities from insurance law if the charity meets qualifying criteria.
4) Seven states are silent on the issue.

1/8/03

AARP Montana

EXHIBIT 9
DATE 3-11-03
SB 143

March 11, 2003 Support SB 143

House Business and Labor Committee
Representative McKenney, Chairman

Mr. Chairman and members of the Business and Labor Committee, my name is Pat Callbeck Harper and I am the Associate State Director for AARP Montana.

AARP is a non-profit, non-partisan membership organization for people 50 and older with more than 136,000 members in Montana. We stood in support of SB143 in the Senate and we are pleased to support it here before you.

The 2002 AARP Montana Consumer Fraud Survey of our members revealed 39% say they believe they have been the victim of consumer swindle or fraud. This is almost double the response to a similar question in a national survey where 21% said they have been a victim of a major swindle or fraud.

The survey of our members reveals at least 18 % of our members have been victims of charities and donations (18%) and nearly one in five say they have been a victim in the areas of insurance products (19%).

Our members attribute many of the examples of consumer swindles to industries that are unregulated or undefined by consumer protections.

We agree with the Governor's Task Force on Charitable Endowments and the State Auditor's Office that SB 143 will facilitate the activity of charity gift annuities and at the same time put stronger consumer protection measures in place.

Thank you for allowing us the opportunity to provide written testimony today and we look forward to working with each of you during the session as a "voice of the consumer" in Montana.

c: Senator Bohlinger
State Auditor's Office

30 West 14th Street, Suite 301 | Great Northern Addition | Helena, MT 59601 | 406-441-2277 | 406-441-2230 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3-11-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date _____

Bill No. ~~HB~~ SB125 Sponsor(s) _____

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Mona Jamison	Mt Life + Health	SB 151		
Pat Caulfield Harper	MT AARP	SB143 SB151		
Jacqueline Denmark	ACLI	SB 151		
~~Linda Reed~~	~~MT Community Fnd~~	~~SB143~~		
Frank O'Loughlin	MT Guaranty Association			
Claudia Clifford	State Auditor	SB151		
Elena Frazek	MT. Life + Health Guar Assoc	SB151		
Aidan McGuire	Gov. Task Force	SB143		
Brenda E Thompson	State Auditor	SB144		
Brenda Elias Thompson	SAO	SB125		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date _____

Bill No. SB 142 Sponsor(s) _____

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Jacqueline Lenmark	ACLI	✓		
Andy Reed	MT Community Fnd	—		
[illegible]	SAO	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

HOUSE OF REPRESENTATIVES

_____ Committee

WITNESS STATEMENT

PLEASE PRINT

NAME SB143 BUDGET _____

ADDRESS CLARK PYFER BOX 752 EAST HELENA DATE 3/11/03

WHOM DO YOU REPRESENT? SELF

SUPPORT: X OPPOSE _____ AMEND _____

COMMENTS:

A very important piece of legislation for Estate planning & protection of the public

/s/CommWitnessState.sample2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 12, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 180 (3/1/03); SB 216 (3/1/03); SB 188 (3/1/03); SB 28 (3/1/03)

Executive Action: SB 143 Be Concurred In; SB 28 Be Concurred In; SB 180 Be Concurred In; SB 216 Be Concurred In.; SB 188 Be Concurred In

HEARING ON SB 180

Sponsor: SEN. DON RYAN, SD 22, Great Falls

Opening Statement by Sponsor:

SEN. RYAN said this bill is an act making permanent the provision that allows an individual who leaves work or is discharged because of circumstances resulting from domestic violence, will be able to receive unemployment benefits.
{Tape: 1; Side: A; Approx. Time Counter: 10 - 67}

Proponents' Testimony:

Jerry Driscoll, Montana State AFL-CIO, said the employers account is not charged so this bill does not effect the rate of the individual employer if that employer should be required to pay unemployment benefits.
{Tape: 1; Side: A; Approx. Time Counter: 67 - 78}

Opponents' Testimony: None

Informational Testimony:

Kevin Braun, Department of Labor & Industry, said he was available to answer questions.
{Tape: 1; Side: A; Approx. Time Counter: 78 - 85}

Beth Satre, Public Policy Specialist, Montana Coalition Against Domestic & Sexual Violence, provided written testimony but did not testify as a proponent.
EXHIBIT(buh52a01)

Questions from Committee Members and Responses:

REP. LAWSON asked Mr. Braun for clarification of who actually pays into unemployment insurance. **Mr. Braun** said the employers pay into the unemployment insurance account. Employees do not pay into the account.
{Tape: 1; Side: A; Approx. Time Counter: 85 - 94}

Informational Testimony:

Kevin Braun, Department of Labor & Industry, said he was available to answer questions.

Questions from Committee Members and Responses: None

Closing by Sponsor:

The sponsor closed.
{Tape: 1; Side: A; Approx. Time Counter: 490 - 500}

EXECUTIVE ACTION ON SB 143

{Tape: 1; Side: B; Approx. Time Counter: 1 - 391}

Motion: **REP. MAEDJE moved that SB 143 BE CONCURRED IN.**

Motion: **REP. MAEDJE moved that SB 143 BE AMENDED. EXHIBIT(buh52a02)**

Discussion:

REP. BOOKOUT-REINICKE said she supported this bill.

REP. KEANE said with the amendments, the bill is changed too much so he opposed the amendments.

Vote: **A roll call vote was taken. Motion carried 10-8 with REPS. KEANE, BERGREN, FRITZ, GALLIK, GALVIN-HALCRO, LAWSON, WEISS, WILSON voting no.**

Motion/Vote: **REP. MAEDJE moved that SB 143 BE CONCURRED IN AS AMENDED. Motion carried 12-6 with REPS. KEANE, FRITZ, WEISS, GALLIK, GALVIN-HALCRO, WILSON voting no.**

REP. MENDENHALL will carry the bill on the House Floor.

EXECUTIVE ACTION ON SB 28

Motion/Vote: **REP. BITNEY moved that SB 28 BE CONCURRED IN. Motion carried 18-0.**

Motion/Vote: **REP. BOOKOUT-REINICKE moved SB 28 BE PLACED ON CONSENT CALENDAR. Motion carried 18-0.**

Bills Clerk _____
Status _____
Journal _____
Bills Coordinator _____

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 143** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Joe McKenney, Chair

To be carried by Representative Scott Mendenhall

And, that such amendments read:

1. Title, line 9.
Following: "AUDITOR;"
Insert: "REQUIRING THE NOTICE TO DONORS TO INCLUDE A STATEMENT OF WHETHER THE CHARITABLE ORGANIZATION HAS EVER INITIATED A LAWSUIT AGAINST A FEDERAL OR STATE GOVERNMENTAL AGENCY;"

2. Page 2, following line 17.
Insert: "(3) The notice required by this section must include a statement informing the donor of whether the charitable organization has ever initiated a lawsuit against a federal or state governmental agency."

- END -

Committee Vote:
Yes 12, No 6.

521006SC.hhn

3-17-03

EXHIBIT 2
DATE 3-12-03
SB 143

Amendments to Senate Bill No. 143
3rd Reading Copy

Requested by Representative Rick Maedje

For the House Business and Labor Committee

Prepared by Bartley Campbell
March 12, 2003 (9:39am)

1. Title, line 9.
Following: "AUDITOR;"
Insert: "REQUIRING THE NOTICE TO DONORS TO INCLUDE A STATEMENT OF WHETHER THE CHARITABLE ORGANIZATION HAS EVER INITIATED A LAWSUIT AGAINST A FEDERAL OR STATE GOVERNMENTAL AGENCY;"

2. Page 2, following line 17.
Insert: "(3) The notice required by this section must include a statement informing the donor of whether the charitable organization has ever initiated a lawsuit against a federal or state governmental agency."

- END -

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 2-12-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 3-12-03 BILL NO SB143 MOTION NO. 1
MOTION: AMENDMENT

NAME	AYE	NO	ABSENTEE
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY		✓	
REP. BOB BERGREN		✓	
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ		✓	
REP. DAVE GALLIK		✓	
REP. KATHLEEN GALVIN-HALCRO		✓	
REP. RAY HAWK	✓		
REP. BOB LAWSON		✓	
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS		✓	
REP. BILL WILSON		✓	
	10	8	

/s/Bus&LaborRollCallVote.2003

AN ACT DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE STATE AUDITOR; PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES; CONFORMING CHARITABLE GIFT ANNUITY LAWS TO LAWS RELATED TO DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS AND TAX CREDITS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; AMENDING SECTIONS 15-30-121, 15-30-165, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. In [sections 1 through 5], the following definitions apply:

(1) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, for the duration of that life or those lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

(a) section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3); or

(b) section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. 170(c).

(3) (a) "Qualified charitable gift annuity" means a charitable gift annuity, described by section 501(m)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 501(m)(5), section 514(c)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 514(c)(5), section 1011(b) of the Internal Revenue Code of 1986, 26 U.S.C. 1011(b), and the implementing regulations, that is issued by a charitable organization that, on the date of the annuity agreement:

(i) has a minimum of $300,000 net worth or has a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement;

(ii) has been in continuous operation for at least 3 years or is a successor or affiliate of a charitable

organization that has been in continuous operation for at least 3 years; and

(iii) maintains a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities.

(b) If the charitable organization cannot meet the requirements of subsections (3)(a)(i) through (3)(a)(iii), the issuance of a qualified charitable gift annuity by a charitable organization must be commercially insured by a licensed insurance company that is qualified to do business in Montana.

Section 2. Charitable gift annuity not insurance. (1) The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

(2) A charitable gift annuity issued before [the effective date of this act] is a qualified charitable gift annuity for purposes of [sections 1 through 5], and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

Section 3. Notice to donor. (1) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor, in writing, in the annuity agreement, that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty association.

(2) The notice provisions required by this section must be in a separate paragraph in print size that is not smaller than that employed in the annuity agreement generally.

Section 4. Notice to commissioner. (1) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner in writing within 90 days after [the effective date of this act] or the date on which it enters into the organization's first qualified charitable gift annuity agreement and shall notify the commissioner on March 1 of each year in which the charitable organization issues qualified charitable gift annuities. The notice must:

(a) be signed by an officer or director of the organization;

(b) identify the organization;

(c) certify that:

(i) the organization is a charitable organization; and

(ii) the annuities issued by the organization are qualified charitable gift annuities.

(2) The organization is not required to submit additional information except:

(a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or

(b) to enable the commissioner to determine appropriate penalties that may be applicable under [section 5].

Section 5. Failure to provide required notice. The failure of a charitable organization to comply with the notice requirements imposed under [sections 3 and 4] does not prevent a charitable gift annuity that otherwise meets the requirements of [sections 1 through 5] from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of [sections 3 and 4] by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of [sections 3 and 4]. The commissioner may fine the charitable organization in an amount not to exceed $1,000 for each qualified charitable gift annuity agreement issued until the time that the charitable organization complies with [sections 3 and 4].

Section 6. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in [section 1];

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by

one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 7. Section 15-30-165, MCA, is amended to read:

"15-30-165. (Temporary) Qualified endowments credit -- definitions -- rules. For the purposes of 15-30-166, the following definitions apply:

(1) Subject to subsection (3), "planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) (a) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

(b) For the purposes of sections 15-30-165 through 15-30-167, the affordable housing revolving loan account established in 90-6-133 is considered to be a qualified endowment.

(3) (a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

(i) the date of death of the beneficiaries; or

(ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

(i) the date of death of the annuitant or annuitants; or

(ii) 5 years after the date of the contribution.

(d) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in [section 1].

(4) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Subsection (2)(b) terminates December 31, 2004--sec. 7, Ch. 411, L. 2001; section terminates December 31, 2007--sec. 5, Ch.

226, L. 2001.)"

Section 8. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in [section 1].

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered."

Section 9. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [sections 1 through 5].

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Applicability. [This act] applies to charitable contributions made after [the effective date of this act].

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